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Supreme Court of the United States

OCTOBER TERM, 1956

No. 280

P. S. GUSS D/B/A PHOTO SOUND PRODUCTS MANUFACTURING COMPANY, APPELLANT,

vs.

UTAH LABOR RELATIONS BOARD

APPEAL FROM THE SUPREME COURT OF THE STATE OF UTAH

FILED JULY 24, 1956

PROBABLE JURISDICTION NOTED OCTOBER 8, 1956

SUPREME COURT OF THE UNITED STATES

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[fol. 1] **BEFORE THE NATIONAL LABOR RELATIONS BOARD**

Case No. 20-RC-2478

In the Matter of P. S. Guss, d/b/a Photo-Sound Products Manufacturing Company, Employer

and

United Steelworkers of America, CIO, Petitioner

Certification of Representatives—May 4, 1954

Pursuant to the terms and provisions of the Agreement for Consent Election entered into by and between the parties in the above-entitled matter, the undersigned Regional Director of the National Labor Relations Board conducted an election by secret ballot as therein provided. No objections were filed to the Tally of Ballots furnished to the parties, or to the conduct of the election.

Pursuant to authority vested in the undersigned by the Agreement for Consent Election and by the National Labor Relations Board, it is hereby certified that a majority of the valid ballots has been cast for United Steelworkers of America, CIO and that pursuant to Section 9 (a) of the National Labor Relations Act said organization is the exclusive representative of all the employees in the unit defined in the Agreement for Consent Election for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

Signed at San Francisco, California on the 4th day of May, 1954.

On behalf of National Labor Relations Board, (S.) Gerald A. Brown, Regional Director for 20th Region National Labor Relations Board.

[fol. 2] BEFORE THE NATIONAL LABOR RELATIONS BOARD.

CHARGE AGAINST EMPLOYER—Filed May 17, 1954
Case No. 20-CA-977

Date filed 5-17-54.

Compliance Status Checked By: el.

Important—Read Carefully

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constitutent unit have complied with section 9 (f), (g), and (h) of the National Labor Relations Act.

Instructions.—File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring

1. Employer Against Whom Charge Is Brought

Name of Employer: P. S. Guss, d/b/a Photo Sound Products Manufacturing Company.

Address of Establishment (Street and number, city, zone, and State): 262-264 East 1st South, Salt Lake City, Utah.

Number of Workers Employed: 20-30.

Nature of Employer's Business: Steel Fabricating.

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and (3) and (5) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

(1) Said Company by its actions in threatening to close the plant if employees joined or voted for the Union has interfered with and coerced its employees, in the exercise of their rights guaranteed by the Act.

(3) Said Company by the discharge of Harry W. Shupe on 3-8-54 and by the discharge of others of their employees on various dates before and since 3-8-54 has engaged in discrimination in regard to tenure of employment in order to discourage membership in the Union.

(5) By its refusal to bargain collectively and by completely ignoring the Unions efforts to establish barggaining since Union was certified 5-4-54.

By such acts and other acts the Company has engaged in and is now engaging in unfair labor practices within the meaning of the Act.

3. Full Name of Labor Organization, Including Local Name and Number, or Person Filing Charge: United Steelworkers of America, CIO.

4. Address (Street and number, city, zone, and State): 25 East 2nd South, 1 Salt Lake City, Utah, Telephone No. 3-4543.

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constitutent Unit (To be filled in when charge is filed by a labor organization): United Steelworkers of America, CIO.

6. Address of National or International, if any (Street and number, city, zone, and State): 1500 Commonwealth Building, Pittsburgh, Pa., Telephone No. Grant 1-5254.

7. Declaration

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By —— ——, (Signature of representative of person filing charge), —— ——, Representative.

May 14, 1954.

[fol. 3] BEFORE THE NATIONAL LABOR RELATIONS BOARD

National Labor Relations Board
Twentieth Region
630 Sansome St.
San Francisco 11, California

July 21, 1954

United Steelworkers of America, C.I.O.
25 East 2nd South
Salt Lake City, Utah

Re: P. S. Guss, d-b-a Photo Sound
Manufacturing Company
Case No. 20-CA-977

Gentlemen:

The above captioned case charging a violation under Section 8 of the National Labor Relations Act, as amended, has been carefully investigated and considered.

Further proceedings are not warranted, inasmuch as the operations of the Company involved are predominantly local in character, and it does not appear that it would effectuate the policies of the Act to exercise jurisdiction. I am, therefore, refusing to issue complaint in this matter.

Pursuant to the National Labor Relations Board Rules and Regulations, you may obtain a review of this action by filing a request for such review with the General Counsel of the National Labor Relations Board, Washington 25, D. C., and a copy with me. This request must contain a complete statement setting forth the facts and reasons upon which it is based. The request should be filed within ten (10) days from the date of the receipt of this letter, except that the General Counsel may, upon good cause shown, grant special permission for a longer period within which to file.

Very truly yours, /s/ Roy O. Hoffman, Roy O. Hoffman, Acting Regional Director.

cc: Division of Operations, NLRB, Washington 25, D. C.
P.S. Guss, d/b/a Photo Sound Products Manufacturing

Company 262-264 East 1st South, Salt Lake City, Utah.
Peter W. Billings, Attorney-at-law, Continental Bank Bldg., Salt Lake City, Utah.

Registered-Return Receipt Requested.

[fol. 4] BEFORE THE UTAH LABOR RELATIONS BOARD

STATE CAPITOL, SALT LAKE CITY, UTAH

Case No. U-863

IN THE MATTER OF PHOTO SOUND PRODUCTS MFG. COMPANY, 262-264 East 1st South, Salt Lake City, Utah and UNITED STEELWORKERS OF AMERICA, CIO.

CHARGE—Filed July 30, 1954

Pursuant to Chapter 1, Title 34, Utah Code 1953, Section 34-1-8 of the Utah Labor Relations Act, the undersigned hereby charges that Photo Sound Products Manufacturing Company has engaged in and is engaging in unfair labor practices within the meaning of Section 34-1-8 subsections (a) and (c), (d) and (e) of said Act, in that

(a) Said employer has since November, 1953 interfered with, restrained and coerced its employees in the exercise of their rights by a number of statements regarding the dire effects which would result to employees if the Union got in the plant including official statements that plant would close down in the event the Union won the NLRB Election.

(c) Said employer by the discharge of Harry W. Shupe, Victor Sismondi, Gary Watrous, Max Whitman, Clisbee H. Lyman and others of its employees on various dates since November, 1953 has engaged in discrimination with regard to tenure of employment in order to discourage membership in the Union.

(d) Said employer by its refusal to bargain collectively with the Union, since Union was certified as the proper agent for collective bargaining purposes by NLRB on 5-4-54.

(e) Said employer by its acts in granting individual wage

increases and other concessions to employees has since 5-4-54 bargain with less than a majority of its employees while at the same time refusing to bargain collectively with the majority of its employees under the provisions of subsection (d) of this Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting intrastate commerce and the orderly operation of industry within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

Subscribed and sworn to before me this 29 day of July 1954, Ormond Konkle.

United Steelworkers of America, CIO, Ralph N. Rasmusson, Representative, 224 Beason Building, Salt Lake City, Utah.

[fol. 5]

STATE OF UTAH

BEFORE THE UTAH LABOR RELATIONS BOARD

[Title omitted]

Case No. U-863

COMPLAINT

The Utah Labor Relations Board having before it a Charge filed July 30, 1954, by the United Steelworkers of America, (CIO) and having advantage of the Board's Investigation of said Charge, the Board under the authority of Title 34, Chapter 1, Section 10, issues this, its complaint and alleges:

1. The United Steelworkers of Amercia (CIO), hereinafter referred to as Complainant, is a labor organization within the meaning of Section 34-1-2, Subsection 5, U.C.A., 1953, and admits to membership employees of Respondent.

2. The Photo Sound Products Mfg. Company, hereinafter referred to as Respondent, is an employer within

the meaning of Section 34-1-2, Subsection 2, U.C.A., 1953.

3. The respondent is a corporation existing under the laws of the State of Utah and is engaged primarily in activities affecting commerce within the State of Utah.

4. The management of the respondent has engaged in activities which tend to interfere with the rights of its employees guaranteed by Section 34-1-7, U.C.A., 1953.

5. The management of respondent has discriminated in regard to tenure of employment or conditions of employment to discourage membership in complainant of Harry W. Shupe, Victor Sismondi, Gary Watrous, Max Whitman, Clisbee H. Lyman and others not known to the board.

6. The respondent has refused to bargain collectively with the complainant since June 23, 1954, and continues to refuse to bargain collectively with complainant who are and have been ever since May 4, 1954 the duly certified bargaining agent of the employees of the Respondent.

[fol. 6] 7. The respondent has through unilateral wage increases bargained collectively with representatives of less than a majority of its employees.

8. The activities of respondent in paragraphs 5, 6 and 7 above all being contrary to and in violation of the spirit and meaning of the Utah Labor Relations Act and more specifically Sections 34-1-8, Subsections 1(a), (c), (d), and (e).

All of the foregoing activities by the respondent being in violation of the Utah Labor Relations Act, such activities tend to affect interstate commerce or the orderly operation of industry within the State of Utah.

Wherefore, the Utah Labor Relations Board being fully advised issues this its Complaint and attaches hereto its Notice of Hearing.

Utah Labor Relations Board, Otto A. Stanley, Chairman, C. S. Carroll, Commissioner, A. E. Taylor, Commissioner.

Passed by the Utah Labor Relations Board, Salt Lake City, Utah, January 14, 1955.

(S) Gloria B. Hanni, Commission Secretary.

[fol. 7] BEFORE THE UTAH LABOR RELATIONS BOARD

EXERPTS FROM TRANSCRIPT OF TESTIMONY

COLLOQUY

The Referee: The hearing will be in order.

This is the time and place set for the hearing of Case No. U-863, Photo Sound Products Manufacturing Company, respondent, and the United Steelworkers of America, CIO, complainant.

The record will show that the complainant, United Steelworkers of America, is present and is represented by counsel, A. Wally Sandack, and the respondent, Photo Sound Products Manufacturing Company is present and represented by counsel, Peter W. Billings.

The title to the case will be amended to state the proper name of the respondent, the proper name being, Philip S. Guss, doing business as Photo Sound Products Manufacturing Company, a Sole Proprietorship.

Off the record.

(Discussion off the record).

STATEMENT OF MR. BILLINGS ON BEHALF OF PHOTO SOUND, ETC.

Mr. Billings: Mr. Guss and his business known as Photo Sound Products Manufacturing Company is in the netherland of jurisdiction. The National Labor Relations Board originally exercised jurisdiction, and then after it changed its rules as to the test to be applied as to whether or not it should exercise jurisdiction, it dismissed jurisdiction in this matter. Now his business is performing contracts for the Defense Department, and I don't think it is intrastate commerce, but it is not such a substantial part of interstate commerce, or has such a substantial effect upon the national defense, within the tests recently adopted by the National

Labor Relations Board, that they felt they should not exercise jurisdiction and they so dismissed the matter.
[fol. 7a] It is our position that this Commission does not have jurisdiction and that it is the jurisdiction of the National Labor Relations Board, which it has decided not to exercise.

STATEMENT OF MR. SANDACK ON BEHALF OF UNITED STEELWORKERS, ETC.

Mr. Sandack: For the record, it is the position of the complainant union that the National Labor Relations Board, in finding as it did on July 21, 1954, "Further proceedings are not warranted, inasmuch as the operations of the company involved are predominantly local in character, and it does not appear that it would effectuate the policies of the Act,"—meaning the National Labor Relations Act—" to exercise jurisdiction. I am, therefore, refusing to issue complaint in this matter." It is the position of the complainant union that Mr. Guss's operation is subject to intrastate commerce.

I also wish to point out for the record that a copy of that letter, which Mr. Billings on behalf of his client, Mr. Guss, received, that letter provided that if there was to be any question upon which either party who received that letter might desire to appeal from that ruling, that a request should be filed within ten days from receipt of the letter so that the General Counsel could determine whether or not the Acting Regional Director was proper in declining to accept this matter.

I think the record should state that neither the complainant or respondent filed any appeal procedure from that ruling, and both accepted it as Board policy, and that was it. Isn't that right, Mr. Billings?

Mr. Billings: We certainly did not appeal for the very position I state herein. This is in the area which the Board has jurisdiction but has refused to exercise it, because of matters of policy.
[fol. 8] Mr. Sandack: You certainly did not appeal from this ruling, that the Board declined to assert jurisdiction.

Mr. Billings: That is right.

Mr. Sandack: Now, Mr. Hearing Officer, it is the union's position that there just cannot be a situation where nobody

has jurisdiction, or where the State, in exercising its rights under statutory labor law would decline to assume jurisdiction over the area that is effected by intrastate commerce. We have created a great hocus-pocus legal vacuum that would have no meaning at all in the field of labor relations which is a dynamic and fluid situation, but requires constant supervision.

The Referee: Off the record.

(Discussion off the record.)

OFFERS IN EVIDENCE AND OBJECTION THERETO

The Referee: The Board will receive as evidence certain documents, the first of which will be marked, "Complainant's Exhibit No. 1," which is a document entitled, "Petition," on a form prescribed by the National Labor Relations Board, dated 12-1-53. Complainant's Exhibit No. 2 is a "Tally of Ballots," dated April 26, 1954.

Mr. Sandack: Mr. Hearing Officer, I think in chronological order next would be the Consent Election.

The Referee: That is right. I have got these out of order. Complainant's Exhibit 3, which is entitled, "Agreement for Consent Election," on a form prescribed by the National Labor Relations Board, is dated January 19, 1954. Then Complainant's Exhibit No. 2, which is a "Tally of Ballots," on a form prescribed by the National Labor Relations Board, dated April 26, 1954. Complainant's Exhibit No. 4, which is a "Certification of Representatives," on a form prescribed by the National Labor Relations Board, is dated [fol. 9] the 4th day of May of 1954, and a letter marked, "Complainant's Exhibit No. 5," is addressed to the United Steelworkers of America, C.I.O., and signed by Roy O. Hoffman, Acting Regional Director.

Mr. Sandack: Mr. Commissioner, there should be attached to the Petition for Certification this designation of employees that the Union claimed were representatives at the time, and that the Board required in connection with the original petition, so make that part of the first exhibit.

The Referee: It will be attached to and made a part of Complainant's Exhibit No. 1.

(The documents referred to were marked, "Complainant's Exhibits Nos. 1 to 5," inclusive, for identification.)

Mr. Billings: I haven't seen that roll. Do I have a copy of it?

The Referee: That is a part of it.

Mr. Sandack: I believe the company supplied it. This was supplied by the company to the Board in connection with a certification and consent proceeding.

Mr. Billings: That is part of the Petition.

May my objection go to these documents, and all other proceedings in this matter, on the basis that is beyond and without the scope of this Commission, on the basis of the facts stated in all the exhibits?

The Referee: The objection will be noted, and the ruling will be reserved. The exhibits will be received in evidence.

(The documents previously marked, "Complainant's Exhibits Nos. 1 to 5, inclusive, for identification, were received in evidence.)

[fol. 10] Excerpts from Testimony of Philip S. Guss

Q. What was the business, the principal business that Photo Sound Equipment Company was engaged in during the period of October, 1953, to October, 1954?

A. Manufacturing photographic equipment for the Air Force.

Q. Was that your only work?

A. The only work with the exception of some work we did for Inter-Mountain in the same shop.

[fol. 11] By Mr. Billings:

Q. Just one or two questions, Mr. Guss. There are three.

A. Yes.

Q. One for the chemical mixers, one for the print straighteners?

A. Yes.

Q. That is all three are for the Air Force and they are shipped to Wright-Patterson Field?

A. With the exception of the chemical mixers, were shipped to Mobile, Alabama; Hill Field here. But some later products have got to be shipped to the Signal Corps.

Q. All the products you manufacture will be shipped outside the State of Utah?

A. Yes, with the exception of what goes to Hill Field. They haven't given us shipping instructions as yet.

Q. And most of the materials you use for the fabrication of these items come from outside the State of Utah?

A. The bulk of it. You can't buy it in Salt Lake. It is all special material the Air Force demanded, and you can't buy it in Salt Lake.

Q. Now you have cut down to this twelve or fourteen men because that is all the work you have to do in your shop at Photo Sound, is that correct?

A. That is correct. We try——Even now we are running low in work. We have to switch the amount of work to help them out rather than let them go.

Mr. Billings: I believe that is all.

By Mr. Sandack:

Q. One or two questions. What is the total amount of the contract between your company and the Air Force for all three of these things?

A. Well, as near as I can remember it would be approxi- [fol. 12] mately $86,000.00, the one for the mixers, and the two other contracts are approximately $60,000.00 total.

Mr. Billings: I can give you the exact amount.

Mr. Sandack: If you would.

Mr. Billings: Surely. The contract for the mixers is $84,896.73; the one for the printers is $37,222.42; and the print straightener is $29,906.35.

By Mr. Sandack:

Q. Now, let me ask you this question. Is the payment on this contract dependent upon your total completion; or payments made under the contract when you ship certain quantities of the gear; or how do you get paid under your contract?

A. It is paid when it is completed.

Q. You haven't been paid at all?

A. We have got paid for one contract, the mixer.

Q. Been paid on the mixer?

A. Yes. The spare parts, we haven't been paid yet.

Q. The $37,000, and the $29,000 are unpaid?
A. That is correct.
Q. Who is the $37,000 and the $29,000 contract with?
A. The same; the Air Force.

[fol. 13] The Referee:

Q. Just one question, Mr. Guss. What was the approximate value of the merchandise that you purchased to complete the contracts with the Air Force that was obtained from without the State of Utah?
A. Well, I can guess. I can give you exactly in the office.
Mr. Billings: I have the figure we gave the N.L.R.B.
The Witness: The valuation of our labor was the biggest item.
The Referee: You can show it to him.
Mr. Billings: Off the record.
(Discussion off the record.)
The witness: I would say between forty-five and fifty thousand dollars.

By the Referee:

[fol. 14] Q. All of those purchases originated outside the State of Utah?
A. If I may say this statement here, we have had so much spoilage. You see the threads for this particular contract was so close, and that has been our biggest problem. We had so much trouble. We couldn't produce a product to satisfy the inspector. We had an inspector right in our plant. As a result we had to buy more material. A lot of it was waste.
Q. The gross amount?
A. I would say it was a little under $50,000.00. I can get the exact amount in our office.
Q. That was mostly steel?
A. Stainless steel.
Q. Do you know where it came from?
A. Yes, sir.
Q. Whereabouts?
A. Mostly from Portland; some from Chicago; some from New York; some from the Coast, to Los Angeles.

[fol. 15] Afternoon Session

February 9, 1955, 2:00 o'clock, p.m.

The Referee: The hearing will be in order.

You have concluded your case, Mr. Sandack?

Mr. Sandack: The record may show that the Union rests.

RENEWAL OF MOTION TO DISMISS

Mr. Billings: At this time I would like to renew my motion to dismiss this proceeding on the ground that the evidence adduced by the complaining union indicates that Mr. Guss's enterprise is engaged solely in interstate commerce and manufactures supplies for the United States Air Force and the major part of its raw materials is imported from outside the State of Utah and on that basis not a [fol. 16] matter within the jurisdiction of this Board.

The Referee: The motion will be taken under advisement and ruled on at a future date.

Now, is it your intention to proceed, Mr. Billings, with an affirmative defense?

Mr. Billings: Yes.

The Referee: But in no way waiving any of your rights under your motion to dismiss?

Mr. Billings: That is correct.

The Referee: You may proceed.

[fol. 17] Mr. Sandack: I don't suppose you want any argument on this matter?

The Referee: The only thing I would like to have is Mr. Billings' memorandum in support of his argument on jurisdiction.

[fol. 18] STATE OF UTAH

Before THE UTAH LABOR RELATIONS BOARD

[Title omitted]

Case No. U-863

INTERMEDIATE REPORT—May 25, 1955

Pursuant to a Complaint and Notice of Hearing of the Utah Labor Relations Board, the above entitled matter came

regularly on for Hearing on February 7th and 9th, 1955, before Robert J. Shaughnessy, the Board's duly designated Trial Examiner.

The Petitioner was present and represented by Counsel, A. Wally Sandack, and the Respondent was present and represented by Counsel, Peter W. Billings, Attorney.

All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing upon the issues.

Following the close of the Hearing, both parties were permitted to file Briefs which have been received and considered by the Trial Examiner.

History of the Case—Jurisdiction

The Respondent, Phillip S. Guss, dba Photo Sound Manufacturing Company, is engaged in the manufacture of specialized equipment for the United States Air Force on a contract basis. The amount of these contracts with the Government or its agencies totaled $152,025.50.

On December 1, 1953, the Petitioner herein filed a Petition (Bd. Exhibit #1) for Certification of representatives with the National Labor Relations Board involving the employees of the Respondent. Pursuant to this Petition, an Agreement for consent election (Bd. Exhibit #3) was signed, an Election conducted on April 26, 1954, a Tally of [fol. 19] Ballots issued April 26, 1954 and a Certification of Representatives dated May 4, 1954. All of the foregoing was handled by and through the National Labor Relations Board, 20th Region.

After a series of attempts at negotiating a contract by the Petitioner and Respondent, an Unfair Labor Practice Charge (Resp. Exhibit #7) was filed against the Respondent by the Petitioner on May 17, 1954. Following the filing of this Charge, the Acting Regional Director of the 20th Region of the N.L.R.B. issued a letter (Comp. Exhibit #9) dated July 21, 1954 in which he declared, "Further proceedings are not warranted, inasmuch as the operations of the Company involved are predominantly local in character, and it does not appear that it would effectuate the policies of the Act to exercise jurisdiction. I am, therefore, refusing to issue complaint in this matter." No appeal or other

proceedings were taken thereafter by either party and the decision became final.

Following this decision, the Petitioner filed charges with the Utah Labor Relations Board alleging in substance the same matters as filed before the N.L.R.B. The Petitioner's position is that the refusal of the N.L.R.B. to act confers jurisdiction on this Board to act. The Respondent's position is that the employer is in fact engaged in interstate commerce, subject to the N.L.R.B. and by Federal preemption in this field the Utah Labor Relations Board cannot act.

It must be conceded that the Respondent is manufacturing products almost all of which are shipped outside the State of Utah. It is also true that a large amount of the dollars expended in performing these contracts are spent for labor and the purchase of materials on a local level. It is thus apparent that intrastate commerce as well as interstate commerce is affected by this dispute.

It is important that consideration must be given to the fact that in the original representation proceeding the Certification was issued on the basis of a "Consent Election." In this proceeding there was no administrative or judicial determination by the N.L.R.B. or its agents that the Respondent's operation was sufficient to warrant the N.L.R.B. to assume jurisdiction. The parties merely agreed that they were subject to the National Labor Relations Act.

[fols. 20-24] Pursuant to the filing of the Unfair Labor Practice Charge by the Complainant before the N.L.R.B., the first expression of administrative determination of the question of jurisdiction occurred when the Regional Director of the N.L.R.B. stated . . . "the operations of the Company involved are predominantly local in character, and it does not appear that it would effectuate the policies of the act to exercise jurisdiction." It appears that here we have an expression by a lack of jurisdiction on the part of the N.L.R.B. and such expression became final when no appeal was taken. The N.L.R.B. and the parties to this proceeding apparently agree that the activities of the Respondent are primarily local in character. The Hearing Referee must agree.

As was stated by our Supreme Court in Utah Labor Relations Board vs. Utah Valley Hospital, 235 Pac. 2d 520;

"It would seem paradoxical indeed to hold as defendant urges us to do, that the hospital is beyond the control of the Utah Legislature because it is controlled by an Act of Congress, which by its very terms excludes the hospital from its operation."

As was aptly pointed out by the New York State Labor Relations Board in a somewhat similar situation in the case of Matter of B.P.O.E. of the United States vs. N.Y.S.L.R.B., 17 S.L.R.B. 61:

"Exclusion of organizations such as Respondents from the coverage of the Act: "... would not immunize them from labor disputes, for it would not deprive the employees of the right to join a union or to engage in concerted activities. The sole effect would be to make unavailable the procedures for peaceful adjustments of labor disputes, which the Legislature has provided in the Act, and regulate the employees to economic action to obtain recognition and negotiations. The purpose of the Act is to substitute the peaceful procedures provided therein for the economic warfare which results from the refusal of employers engaged in commercial activities to negotiate with the representatives of their employees.' "

The Hearing Examiner must, therefore, conclude that the business of the Respondent affects intrastate commerce, or the orderly operation of industry within the State of Utah, and since the N.L.R.B. has refused jurisdiction, therefore the Utah Labor Relations Board has jurisdiction.

[fol. 25] FINDING OF FACT

1. The Petitioner, United Steelworkers of America, is a labor organization within the meaning of the Utah Labor Relations Act and admits to membership employees of the Respondent.

2. The Respondent, Phil S. Guss, dba Photo Sound Products Mfg. Co., is a sole proprietorship engaged in the manufacture of equipment to be sold to the United States Air Force.

[fols. 26-27] 3. The Respondent's contract with the United States Air Force totals approximately $152,000.00, a part

of such sum represents materials purchased locally and a substantial part represents payments for labor to local employees.

4. The Respondent's activities affect intrastate commerce or the orderly operation of industry within the State of Utah.

5. The Petitioner has since May 4, 1954 represented a majority of the employees of the Respondent in an appropriate bargaining unit as certified by the National Labor Relations Board following a Consent Election on April 26, 1954.

[fols. 28-30] Utah Labor Relations Board, Robt. J. Shaughnessy, Trial Examiner.

Issued this 25th Day of May, 1955, Salt Lake City, Utah.

[fol. 31] STATE OF UTAH

BEFORE THE UTAH LABOR RELATIONS BOARD

Case No. U-863

IN THE MATTER OF PHOTO SOUND PRODUCTS MFG. COMPANY, Respondent, and UNITED STEELWORKERS OF AMERICA, CIO, Complainant.

DECISION AND ORDER—June 21, 1955

The Utah Labor Relations Board has considered the Intermediate Report and Recommended Order of Robert J. Shaughnessy, the Board's duly designated Trial Examiner, in the above entitled cause, together with the transcript, exhibits, briefs and exceptions to the Intermediate Report.

The Board finds the Trial Examiner's rulings made at the Hearing are free from prejudicial error and are hereby affirmed.

Upon consideration of the entire record, the briefs, and the exceptions, the Board adheres to the Intermediate Re-

port and Recommended Order made by the Trial Examiner and adopts as its own the Findings of Fact therein made. The Board therefore finds as follows:

1. The Petitioner, United Steelworkers of America, is a labor organization within the meaning of the Utah Labor Relations Act and admits to membership employees of the Respondent.

2. The Respondent, Phil S. Guss, d.b.a. Photo Sound Products Mfg. Company, is a sole proprietorship engaged in the manufacture of equipment to be sold to the United States Air Force.

3. The Respondent's contract with the United States Air Force totals approximately $152,000.00, a part of such sum represents materials purchased locally and a [fol. 32] substantial part represents payments for labor to local employees.

4. The Respondent's activities affect intrastate commerce or the orderly operation of industry within the State of Utah.

5. The Petitioner has since May 4, 1954 represented a majority of the employees of the Respondent in an appropriate bargaining unit as certified by the National Labor Relations Board following a Consent Election on April 26, 1954.

6. Charles Illsley was employed by the Respondent as a sheet metal worker and was discharged in August 1954 for activities for and on behalf of the Petitioner.

7. Gary Watrous was employed on July 15, 1954 and discharged on May 7, 1954 for activities for and on behalf of the Petitioner.

8. Harry Shupe was employed on October 9, 1953 and discharged on March 5, 1954 and such discharge was not for activities for and on behalf of the Petitioner.

9. Rudolf Wobbe was employed in October of 1953 and discharged in October of 1954 and such discharge appeared to be prompted by his activities for and on behalf of the Petitioner. However, this employee expressed no desire to return to his former employment.

10. Victor Sismondi was employed in October of 1953 and discharged in April of 1954 for activities for and on behalf of the Petitioner.

11. There is no competent evidence to support a finding that Clisboo Lyman was discharged for activities for and on behalf of the Petitioner and no evidence was introduced in regard to the discharge of Max Whitman.

12. The question of interference in the rights of the employees to organize is not in issue since the Petitioner has been duly designated as the collective bargaining representative of the employees.

13. The Respondent has at all times since August 11, 1954, failed and refused, and continues to fail and [fol. 33] refuse to meet, confer, discuss and negotiate in good faith with the Petitioner as the exclusive bargaining representative of the employees in the agreed appropriate unit for the purpose of collective bargaining in regards to rates of pay, hours of employment, and other conditions of employment, although requested to do so by the Petitioner.

It is therefore ordered that—

1. Phil S. Guss, d.b.a. Photo Sound Products Mfg. Company, cease and desist from refusing to bargain collectively with United Steelworkers of America as the exclusive bargaining representative of his employees employed at his place of business, 264 East 1st South, Salt Lake City, Utah, in respect to rates of pay, hours of employment and other conditions of employment.

2. Take the following affirmative action which the Board finds is necessary to effectuate the policies of the Act:

(a) Upon request, bargain collectively with United Steelworkers of America as the exclusive bargaining representative of his employees employed by the Respondent at 264 East 1st South, Salt Lake City, Utah, in respect to rates of pay, hours of employment and other conditions of employment.

(b) Upon application, either personally or through their bargaining representative, immediately and fully reinstate Charles Illsley, Gary Watrous and Victor

Sismondi to their former positions with Respondent held by them prior to the dates of their discharge without prejudice to any rights or privileges previously enjoyed by each of them, discharging, if necessary, any person or persons employed in the place of each since their discharge.

(c) Make whole each of the employees named in paragraph (b) above for any loss of wages that may have occurred from the time of their discharge until they are fully reinstated. Employer to receive credit for all earnings from all sources during the time be-
[fol. 34] tween the date of their discharge and the time of their reinstatement.

(d) Post immediately, in plain sight, and leave posted for a period of thirty consecutive days from the first day of posting, in a conspicuous place in Respondent's premises, a copy of the Board's Order together with an appropriate notice to its employees in the form to be determined by the Board, (Exhibit A).

(e) Notify the Utah Labor Relations Board in writing within fifteen (15) days of the receipt of the Board's Order, what steps Respondent has taken to comply with the provisions of this Order.

Utah Labor Relations Board, (S.) Otto A. Wirsley, Chairman, (S.) C. S. Carroll, Member, (S.) L. L. Taylor, Member.

Passed by the Utah Labor Relations Board, Salt Lake City, Utah, June 21st, 1955.

(S.) Gloria B. Hanni, Commission Secretary.

[fol. 35] STATE OF UTAH

BEFORE THE UTAH LABOR RELATIONS BOARD

[Title omitted]

MOTION FOR RE-HEARING—Filed June 29, 1955

Comes Now Respondent, Photo Sound Products Mfg. Company, and respectfully moves the Utah Labor Rela-

tions Board to grant a re-hearing of the above entitled matter on the ground that the order of the Commission dated June 21, 1955, is in error in the following particulars:

1. The Board was without jurisdiction over the labor relations of Respondent Photo Sound Products Manufacturing Company in that respondent is engaged in a business affecting interstate commerce and its labor relations are within the exclusive jurisdiction of the National Labor Relations Board under the provisions of Section 10(a) of the National Labor Relations Act, as amended.

2. The Board's Findings of Fact with respect to Charles Illsley, Gary Watrous and Victor Sismondi are in error and not supported by the evidence.

3. The conclusions with respect to the alleged refusal to bargain are in error and not supported by the evidence.

Peter W. Billings, Attorney for Respondent.

Proof of service (omitted in printing).

[fol. 36] STATE OF UTAH

BEFORE THE UTAH LABOR RELATIONS BOARD

[Title omitted]

ORDER DENYING MOTION FOR REHEARING—June 29, 1955

It is hereby ordered that a Motion for Re-Hearing filed by the Respondents, Photo Sound Products Mfg. Company on June 29th, 1955, be and the same is hereby denied.

Utah Labor Relations Board, /S/ Otto A. Wimley, Chairman, /S/ C. S. Carroll, Member, /S/ L. L. Taylor, Member.

Passed by the Utah Labor Relations Board, Salt Lake City, Utah, June 29th, 1955.

/S/ Gloria B. Hanni, Commission Secretary.

[fol. 37] IN THE SUPREME COURT OF THE STATE OF UTAH

Case No. 8393

PHILIP S. GUSS, dba PHOTO SOUND PRODUCTS MANUFACTURING COMPANY, Petitioner

vs.

UTAH LABOR RELATIONS BOARD and UNITED STEELWORKERS OF AMERICA, CIO, Respondent

PETITION FOR WRIT OF REVIEW

Comes now Petitioner and respectfully represents:

1. That he is engaged in business in Salt Lake City under the name of Photo Sound Products Manufacturing Company; that said business is devoted exclusively to the manufacture of specialized photographic equipment for the U.S. Air Force and as such is engaged in interstate commerce or in a business affecting interstate commerce within the intent and meaning of the Labor Management Relations Act of 1947, as amended.

2. That contrary to the specific grant of exclusive power to the National Labor Relations Board under said Act the Utah Labor Relations Board has entertained a charge filed with it by the United Steelworkers of America, CIO, and issued a complaint thereon against Petitioner. That despite the contentions of Petitioner concerning the lack of jurisdiction of said Board, said Board under date of June 21, 1955 issued its decision and order relating to the labor relations of Petitioner and on June 29, 1955 denied Petitioner's motion for re-hearing. At all times herein Petitioner has contended said Board was wholly without authority or jurisdiction to act in the matter.

3. Further, the Board has made certain findings of fact and ordered certain affirmative action to be taken with respect to the employment of Charles Illsley, Gary Watrous and Victor Sismondi and has found that Petitioner has refused to bargain collectively with said United Steelworkers of America. Said findings and order are wholly unsup-

ported by the evidence duly introduced before the said Board.

[fol. 38] Wherefore, this Petitioner prays that this Honorable Court order the issuance of a Writ of Certiorari or Review directed to the Utah Labor Relations Board to certify its record, including all proceedings and evidence in this cause to this court at such time after the issuance of said writ as may please this court, to the end that this court shall set aside the order of said Board and direct the said Utah Labor Relations Board to dismiss its proceedings concerning the labor relations of Petitioner as beyond the jurisdiction of said Board or failing that, that this court modify the order of said board to eliminate any findings of discriminatory discharges or refusal to bargain.

Respectfully submitted, Peter W. Billings, Attorney for Applicant.

[fol. 39] IN THE SUPREME COURT OF THE STATE OF UTAH

No. 8393

P. S. Guss, d/b/a Photo Sound Products Manufacturing Company, Plaintiff,

v.

UTAH LABOR RELATIONS BOARD and UNITED STEELWORKERS OF AMERICA, CIO, Defendants

OPINION

McDONOUGH, Chief Justice:

The plaintiff, P. S. Guss, d/b/a Photo Sound Manufacturing Company, is engaged in the manufacture of specialized equipment for the United States Air Force on a contract basis. The amount of these contracts with the government or its agencies totaled $152,025.50, and materials were purchased outside the state in an amount "a little less than $50,000." The finished products were shipped to Air Force Bases both within the state and without.

In December, 1953, the United Steelworkers of America, CIO, filed with the National Labor Relations Board, a petition for certification of that union as the bargaining representative for employees of the company. The company and the union entered into an agreement for a consent election to be conducted by the N.L.R.B., the agreement reciting that the employer is "engaged in commerce within the meaning of Section 2(6)(7) [1] of the National Labor Relations Act." The election was won by the union and the United Steelworkers of America, CIO, was certified by the N.L.R.B.

The union filed charges of violations under Section 8 [2] of the National Labor Relations Act with the N.L.R.B., alleging unfair labor practices on the part of the employer. On July 21, 1954, the National Labor Relations Board declined to consider the charges of the union, stating:

> "Further proceedings are not warranted, inasmuch as the operations of the company involved are predominantly local in character and it does not appear that it would effectuate the policy of the Act to exercise jurisdiction."

Thereafter, the union filed substantially the same charges with the State Board, which, after a hearing on the charges, ordered Photo Sound to cease and desist from using to bargain collectively with the CIO and further directing that certain discharged employees be reinstated with compensation for the time for which they had been unemployed.

The employer obtained this Writ of Review for the purpose of questioning the jurisdiction of the Utah Labor Relations Board. The sole question before us is whether the state board may act in relation to a business admittedly engaged in interstate commerce and subject to the National Labor Relations Act and the National Labor Relations Board when that Board declines, upon the grounds stated, to exercise jurisdiction.

Apparently, the N.L.R.B. determined not to take jurisdiction of this matter on the basis of jurisdictional stand-

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[1] 29 U.S.C. § 152 (6) § (7).

[2] 29 U.S.C. § 158.

ards established by the Board, summarized in N.L.R.B. Press Release R-449, July 15, 1954. These standards, promulgated to relieve the federal agency of some of the weight of matters falling within its jurisdiction under the broad provisions of Section 3(6)(7) of the Act, select arbitrary lines determined by the nature of the business and its size. The difficulty here is that if the Utah Labor Board has no jurisdiction and the National Labor Board refuses to accept jurisdiction, the parties are left to their own devices in securing industrial harmony, although both the federal and local government have evidenced concern with labor relations in providing law and agencies to administer it.

Plaintiff cites to us language from many cases decided by the U. S. Supreme Court concerning whether or not Congress intended to pre-empt the entire field of labor-management relations within its power to do so under the commerce clause of the Constitution. But concedes that an instance of the refusal of the N.L.R.B. to take jurisdiction, as here, has never been litigated before that court.

Bethlehem Steel Co. v. New York State Labor Relations Board, 330 U.S. 767, 67 S. Ct. 1026, 91 L. Ed. 1234, (1947) involved the question of whether the state board could certify a foremen's union subject to the National Labor Relations Act where the national board had refused to certify that union as a matter of board policy. The court stated through Mr. Justice Jackson:

> ". . . If the two boards attempt to exercise a concurrent jurisdiction to decide the appropriate unit of representation, action by one necessarily denies the discretion of the other. The second to act either must follow the first, which would make its action useless and vain, or depart from it, which would produce a mischievous conflict. The State argues for a rule that would enable it to act until the federal board had acted in the same case. But we do not think that a case by case test of federal supremacy is permissible here. The federal board has jurisdiction of the industry in which these particular employers are engaged and has asserted control of their labor relations in general. It asserts, and rightfully so, . . . its power to decide

whether these foremen may constitute themselves a bargaining unit. We do not believe this leaves room for the operation of the state authority asserted."

A similar result was reached in La Cross Telephone Corporation v. Wisconsin Employment Relations Board, 336 U.S. 18, 69 S. Ct. 379, 93 L.Ed. 463 (1948) and the Supreme Court further emphasized its view that a state's certification of a bargaining unit in the absence of N.L.R.B. action created conflict in the field of labor relations of groups in interstate commerce:

". . . We know that administrative practice also disposes of cases in which no order has been entered. Disposition of controversies on an administrative as distinguished from a formal basis will often reflect the attitudes of the National Board which have not been reduced to orders in those specific cases. A certification by a state board under a different or conflicting theory of representation may therefore be as readily disruptive of the practice under the federal act as if the orders of the two boards made a head-on collision. . . ."

On the basis of these two cases, the Court reversed a decision of the Wisconsin Supreme Court (255 Wis. 285, 38 N.W.2d 688) which held that the State Employment Relations Board had jurisdiction over a matter of *unfair labor practices* in the absence of a federal board ruling, Plankinton Packing Co. v. Wisconsin Employment Relations Board, 338 U.S. 953, 70 S. Ct. 491, 94 L. Ed. 588 (1950).

However, certain inroads have been made upon the doctrine of exclusiveness of the National Board's jurisdiction under the familiar principle the Congress may determine how far its regulation of interstate commerce shall go, and when it circumscribes its regulation, and occupies only a limited field, state regulation outside that limited field is not forbidden or displaced. Where the peace of the community is threatened by mass picketing, threats, property damage, and obstruction of streets, a state may act to enjoin such activities. Allen-Bradley Local v. Wisconsin Employment Relations Board, 315 U.S. 740, 62 S. Ct. 820, 86 L. Ed. 1154, (1942). Recurrent, unannounced work

stoppages are neither prohibited nor protected by the Taft-Hartley Act and hence a state may control that conduct. International Union v. Wisconsin Employment Relations Board, 336 U.S. 245, 69 S. Ct. 516, 93 L. Ed. 651, (1949). See also Algoma Plywood & Veneer Co. v. Wisconsin Employment Relations Board, 336 U.S. 301, 69 S. Ct. 584, 93 L. Ed. 691, (1949). The Supreme Court has permitted an action for damages in a state court by an employer for injury done in a labor dispute, holding that there was no compensatory relief provided under the federal Act and hence no conflict with its provisions. United Constr. Workers v. Laburnum Constr. Corp., 347 U.S. 656, 74 S. Ct. 833, 98 L. Ed. 1025, (1954).

[fol. 40] The most recent Supreme Court pronouncement in this area is found in Weber et al., v. Anheuser-Busch, Inc., 348 U.S. 468, 75 S. Ct. 480, 99 L. Ed. 468, (1955) wherein the court held that the exclusive primary jurisdiction of the National Labor Relations Board prevented a state court's enjoining certain activities, although the federal board had determined that no violation of Section 8(b)(4)(D) was committed by those activities. The employer, the petitioning party, included violations of other subsections of the act in its complaint before the court which had not been filed as charges before the N.L.R.B.; the Supreme Court held that the Board's decision was strictly limited to the charge before it and was not tantamount to a determination that no unfair labor practices existed under the Act. However, in holding that the state court had no jurisdiction to issue an injunction in this particular case, Mr. Justice Frankfurter concluded the opinion of the court:

> "By the Taft-Hartley Act, Congress did not exhaust the full sweep of legislative power over industrial relations given by the Commerce Clause. Congress formulated a code whereby it outlaws some aspects of labor activities and left others free for the operation of economic forces. As to both categories, the areas that have been pre-empted by federal authority and thereby withdrawn from state power are not susceptible of delimitation by fixed metes and bounds. Obvious conflict, actual or potential, leads to easy judicial exclusion

of state action. Such was the situation in Garner v. Teamsters, C. & H. Local Union, supra. But as the opinion in that case recalled, the Labor Management Relations Act 'leaves much to the states, though Congress has refrained from telling us how much.' . . . This prenumbral area can be rendered progressively clear only by the course of litigation. . . ."

Certain language contained in federal cases have presaged the present situation where the N.L.R.B. determined not to hear the matter presented to it because of policy or budgetary reasons. It has been recognized that the Board need not accept every controversy of which it has jurisdiction, Haleston Drug Stores v. National Labor Relations Board, 187 F.2d 418. It was expressly mentioned that in the Garner case there was nothing to suggest that the federal Board would decline to exercise its powers once its jurisdiction was invoked, Garner v. Teamsters, C. & H. Union, 346 U.S. 485, 74 S. Ct. 161; 346 U.S. 485 (1953). Suggestions in the Bethlehem Steel Co. case, supra, and particularly the separate opinion of Mr. Justice Frankfurter, in which he was joined by Mr. Justice Murphy and Mr. Justice Rutledge, indicate that a different view is to be taken of state action where the N.L.R.B.'s determination not to hear a matter takes on the character of a decision, as in that case, and the situation where the N.L.R.B. refuses jurisdiction because of lack of funds or because of the view that the instant industrial relations are more appropriately a matter of state concern. The concurrence of Circuit Judge Pope in Capital Service, Inc. v. N.L.R.B., 204 F.2d 848 (1953) presented the problem now before us without determining the question.

Under this state of the law concerning the National Labor Relations Act, state court's ruling on the jurisdiction of state agencies to act after a declination of jurisdiction by the federal board, have both allowed and denied the state power. We take as our guides to the reasoning of the two views the cases of New York State Labor Relations Board v. Wags Trans. System, 130 N.Y.S.2d 731, affirmed 134 N.Y.S.2d 638, and Garmon v. San Diego Building Trades Council, (Cal.), 291 P.2d 1.

Although we might set forth factual differences between the two cases and perhaps reconcile them by distinguishing, our aim is merely to realize the two points of view in order to determine for this court the considerations involved. Both cases consider the provisions of Section 10(a) of the Taft-Hartley Act:[3]

> "The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: *Provided, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry* (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, *unless the provisions of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.*" (Emphasis added)

On whether or not this provision provided an exclusive means by which state agency might acquire jurisdiction over matters covered by the federal Act, the New York Court said:

> "In adopting the proviso to Section 10(a) the clear policy of Congress was to prevent the application of state law and procedure which did not conform to the Taft-Hartley Act. Congress was not unaware of the earlier practice of ceding jurisdiction to local boards. Indeed, it considered the method desirable. But limitations were placed upon such cession. Apparently Congress decided that it was more important to have no cession than to have it without compliance with the standards it prescribed. A secondary purpose may

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[3] 29 U.S.C. sec. 160 (a).

well have been to encourage state legislation to adopt the Taft-Hartley provisions.

"There have been no cession agreements concluded with the New York Board or any other. Criticism of the proviso to section 10(a) has come from all quarters including Senator Taft who proposed its partial relaxation in 1949. No such amendments have been adopted . . .

"It follows quite logically that Congress provided in section 10(a) the sole means for transferring to state jurisdiction activities which are subject to the National Labor Relations Act, as amended.

"Thus the National Board has rightly decided that by virtue of the 1947 amendment it is without power to cede jurisdiction even over an essentially local business where the state statute does not impose the same requirements on unions seeking relief as does the National Act."

In support of this view it is important to note that this cession provision was added to the law subsequent to the Bethlehem Steel Co. case; also, the Senate Labor Committee in the 2nd session of the 83rd Congress proposed amendments, which were defeated, to the Taft-Hartley Act which included a provision to allow state courts to assert jurisdiction where the N.L.R.B. determined that the effect on commerce is not sufficiently substantial to warrant the exercise of the Board's jurisdiction. The New York Court quoted from the Pittsburgh Rys. Co. Substation Operators and Maintenance Employees' case, 357 Pa. 379, 54 A.2d 891, 174 A.L.R. 1045:

"The criterion to determine validity of the exercise of state power is not whether the agency administering federal law has acted upon the relationship in a given case; rather, it is whether Congress has asserted its power to regulate that relationship."

On the other hand, there are a great many equitable arguments in favor of allowing the state jurisdiction over industrial controversies where the federal Board refuses to do so. The federal Board has neither the money nor the

time to administer the vast field entrusted to it under the Act and, with increasing interstate commerce, must select matters which it will handle on the basis of the effect upon national interests. (See Mr. Justice Frankfurter's opinion in the Bethlehem Steel Co. case.) If the Board determines that the business done is predominantly local in character, the interests affected must likewise be predominantly local and hence a matter for regulation by the state. If the federal Board declines jurisdiction and the state is prohibited from taking action, a large segment of industrial relations is unregulated, contrary to the purposes of both federal and state acts, and the parties are left to self-help which has already proved disastrous to economy and internal peace.

[fol. 41] On these bases, the California Court in the Garmon case, supra, held:

> "The reason for prohibiting state courts from acting in cases in which the Board has jurisdiction is to obtain uniform application of the substantive rules as expressed by Congress, and to avoid diversities and conflicts likely to result from a variety of local procedures and attitudes toward labor controversies. . . . A remedy under federal laws available to an injured party may justify pre-emption of the field of labor relations, but when the application of that rule would result in the loss of all protection, there is no reason to bar state courts from providing relief. There is no conflict of jurisdiction when the federal board determines not to adjudicate the issues. Furthermore, a refusal to accept jurisdiction upon the ground that the issue presented does not sufficiently affect the national welfare to justify the Board's attention, in effect, is a declaration that the national labor policy will not be jeopardized if the state assumes jurisdiction.
>
> "When Congress enacted the applicable statutes, it must have been aware that an unfair labor practice may affect management and labor in a small business to the same extent as in a large industry. The difference is only the effect on the national labor and economic level. Certainly Congress did not intend to deprive a business having only a limited effect on interstate commerce of all protection in a labor-management

controversy. By giving the Board discretion to accept or refuse jurisdiction, the legislative purpose must have been to give the state courts jurisdiction when the Board specifically determines that the controversy will not affect the national economy."

It appears from our research that both views are logically valid under the existing decisions of the U. S. Supreme Court, and it is conceivable that both views might be legally valid under different circumstances. It is interesting to note that the New York State Labor Relations Board has, since the Wags decision, supra, declared its policy to take jurisdiction over those labor disputes in which it is evident that the National Labor Relations Board will decline to exercise its jurisdiction, under the view that the affirmation of that decision was strictly limited to instances where there is not a clear showing that the national board would have rejected jurisdiction. Raisch Motors, 35 LRRM 1631.

In the present case, there are no allegations that either party was deprived of rights which it might have obtained under the federal law had the NL.R.B. heard the charges presented to it. There are, in fact, no intimations that the national Board would have disposed of the matter in a way other than that in which the state board did. No substantive conflicts between the provisions of the Taft-Hartley Act concerning unfair labor practices (29 U.S.C., sec. 158) and the Utah Code (U.C.A. 1953, 34-1-8) have been alleged nor do any appear with reference to the particular charges involved, i.e., discrimination against union employees and refusal to bargain collectively with certified representatives.

Since we discover no conflict with federal authority in this case, and since the values of immediate legal supervision of labor controversies within this company can only be maintained through state action, we hold that the Utah Labor Relations Board had jurisdiction in this matter and affirm its decision and order. Costs to defendant.

We Concur:

J. Allan Crockett, Justice, F. Henri Henriod, Justice, Lester A. Wade, Jutsice, Geo. W. Worthen, Justice.

[fol. 42] IN THE SUPREME COURT OF THE STATE OF UTAH

No. 8393

P. S. GUSS, d/b/a PHOTO SOUND PRODUCTS MANUFACTURING COMPANY, Plaintiff,

v.

UTAH LABOR RELATIONS BOARD and UNITED STEELWORKERS OF AMERICA, CIO, Defendants

JUDGMENT—April 30, 1956

This cause having been heretofore argued and submitted and the Court being sufficiently advised in the premises, it is ordered, adjudged and decreed that the judgment of the Utah Labor Relations Board herein be, and the same is affirmed.

Costs to defendants.

[fols. 43-50] Petition for rehearing covering 11 pages filed May 11, 1956 omitted from this print. It was denied, and nothing more by order June 4, 1956.

[fol. 51] IN THE SUPREME COURT OF THE STATE OF UTAH

[Title omitted]

ORDER DENYING REHEARING—June 4, 1956

Upon consideration of the Petition for Rehearing heretofore filed herein and the arguments of counsel thereupon had, it is ordered that a rehearing be, and the same is, denied.

[fol. 52] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF UTAH

[Title omitted]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—June 14, 1956

I. Notice is hereby given that P. S. Guss, doing business as Photo Sound Products Manufacturing Company, appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme

Court of Utah affirming the decision and order of the Utah Labor Relations Board entered in this action on April 30, 1956, and the order of the Supreme Court of the State of Utah denying the Petition for Rehearing entered on June 4, 1956.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

II. The Clerk of the Court will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States and include in said transcript the following:

1. The certification of the United Steel Workers of America, CIO as to the bargaining representative of the employees of appellant (R. 234).

2. The unfair labor practice charge filed with the National Labor Relations Board by the United Steel Workers of America against appellant (R. 290).

3. Letter from National Labor Relations Board dated June 21, 1954 declining to exercise jurisdiction over said unfair labor practice charge (R. 235).

4. Unfair labor practice charge filed against appellant by United Steel Workers of America with the Utah Labor Relations Board (R. 1).

[fol. 53] 5. Complaint issued by the Utah Labor Relations Board against appellant (R. 2).

6. Intermediate Report and Recommended Order of the Trial Examiner before the Utah Labor Relations Board (R. 329).

7. Decision and Order of the Utah Labor Relations Board (R. 329).

8. Motion for Rehearing before the Utah Labor Relations Board filed by appellant (R. 334).

9. Denial of Rehearing issued by Utah Labor Relations Board (R. 335).

10. Petition for Writ of Review to the Supreme Court of the State of Utah (R. 336).

11. Opinion and Order of the Supreme Court of the State of Utah affirming the order of the Utah Labor Relations Board.

12. Order of the Supreme Court of the State of Utah denying appellant's Petition for Rehearing.

13. Notice of Appeal to the Supreme Court of the United States filed on the 14th day of June, 1956.

III. The following question is presented by this appeal:

Whether the National Labor Relations Act, as amended (29 U.S.C. § 151-156), Article VI, clause 2 and Article I, sec. 8 of the Constitution of the United States preclude the Utah Labor Relations Board from asserting jurisdiction over an unfair labor practice charge filed under state law against appellant who is engaged in a manufacturing business affecting interstate commerce where the National Labor Relations Board has previously certified the union as the bargaining representative for appellant's employees under section 9(a) of the National Labor Relations Act, but [fols. 54-56] has declined to exercise its jurisdiction to hear the unfair labor practice charge filed under section 8 of said Act.

Dated this 14th day of June, 1956.

Harold P. Fabian, Peter W. Billings.

Proof of Service (omitted in printing)

[fol. 57] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 58] Supreme Court of the United States, October Term, 1956

No. 280

Appeal from the Supreme Court of the State of Utah.

Order Noting Probable Jurisdiction—October 8, 1956

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary calendar and assigned for argument immediately following No. 50.